IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 103 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.R.VYAS
and
Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMA FERTILIZERS PVT.LTD.

Versus

STATE OF GUJARAT

Appearance:

MR PM RAVAL with MR HARIN RAWAL for Petitioners
MR KC SHAH, ADDITIONAL PUBLIC PROSECUTOR for
Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.R.VYAS
and
MR.JUSTICE J.M.PANCHAL

Date of decision: 13/10/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

This Revision Application has been ordered to be placed before the Full Bench in view of the fact that the learned Single Judge, who was hearing the application could not agree with the ratio of an earlier decision of a Single Judge in Criminal Revision Application No. 410 of 1989 (P.D. Agarwal Vs. State of Gujarat and anr.) decided on 11th October, 1990, in which, dealing with a similar case of contravention of clause 13 of the Fertilizer (Control) Order, 1957 (hereinafter referred to as `the Order'), the learned Single Judge had taken a view that the complaint was barred by limitation prescribed under Section 468 of the Code of Criminal Procedure, because such contravention was punishable under Section 7(1)(a)(i) of The Essential Commodities Act, 1955 (`the Act' for short), with imprisonment for a term which may extend to one year and fine. Since in the present case also the complaint was in respect of the contravention of the provisions of Clause 13 of the said Order, the learned Single Judge having noticed that such a case did not fall under Section 7(1)(a)(i) of the said Act, which applied to an Order made with reference to the provisions of Clauses (h) or (i) of sub-section (2) of Section 3 thereof, and that the alleged contravention of Clause 13 of the Order was punishable under Section 7(1)(a)(ii) of the Act, with imprisonment for a term of not less than three months, but may extend to seven years, had ordered the matter to be placed before a larger Bench.

2. The petitioners who are the original accused Nos. 2 and 3 were facing trial before the Special Court, Surendranagar for an offence under Section 7(1)(a)(ii) of the Act read with Clause 13 of the Control Order. In those proceedings they made an application Ex.39 praying for rejection of the complaint on the ground that it was barred by limitation under the provisions of Section 468 of the Code since the complaint was filed two years after the date of the incident for an offence, which was punishable with imprisonment for a term not exceeding one year for which the period of limitation provided was one year under Section 468(2)(b) of the Code. According to the petitioners, the offence alleged against them fell within Section 7(1)(a)(i) of the said Act, which refers to Clauses (h) and (i) of sub-section (2) of Section 3 of the Act. The learned Additional Sessions Judge

constituting the Special Court, by his order dated 30.11.1989, rejected the said application holding that the contravention which was alleged was not of the category which fell under Section 7(1)(a)(i), read with Section 3(2) (h) and (i) of the Act, but it would fall under Sec.7 (1)(a)(ii) thereof.

3. The relevant provisions which are required to be kept in mind from the said Act, the Act of 1981, and the Order as well as the Code are as under:-

The Essential Commodities Act, 1955.

Section 3. "Powers to control production, supply, distribution, etc. of essential commodites. -(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, `[or for securing any essential commodity for the defence of India or the efficient conduct of military operations], it may, by Order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an Order made thereunder may provide --

(a) xxx xxx
(b) xxx xxx
(h) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;

(i) for requiring persons engaged in the production, supply or distribution of, or trade and commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order;"

Section 7. "Penalties -- [(1) - If any person contravenes any Order made under Sec.3 --

(a) he shall be punishable, --

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other Order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

Provided that the Court may, for any adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than three months;

The Essential Commodities (Special Provisions) Act, 1981:

Section 7. Amendment of Section 7.-- "In Section 7 of the principal Act, --

(a) in sub-section (1), the proviso to sub-section (ii) of clause (a) shall be omitted."

Section 11 substitution of new Sections for Section 12-A:

Section 12-A. "Constitution of Special Courts.-- (1) The State Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the official Gazette, constitute as many Special Courts as may be necessary for such area or areas as may be specified in the notification.

(2) A Special Court shall consist of a single Judge who shall be appointed by the High Court upon a request made by the State Government."

Section 12-AA. "Offences triable by Special Courts. -(1) Notwithstanding anything contained in the Code,--

(a) xxx xx
(b) xxx xx

(f) all offences under this Act shall be tried in a summary way and the provisions of Sections 262 to 265 (both inclusive) of the Code shall, as far may be apply to such

Provided that in the case of any conviction in a summary trial under this Section, it shall be lawful for the Special Court to pass a sentence of imprisonment for a term not exceeding two years

(2) When trying an offence under this Act a Special Court may also try an offence other than an offence under this Act, with which the accused may under the Code, be charged at the same trial;

Provided that such other offence is, under any other law for the time being in force, triable in a summary way:

Provided further that in the case of any conviction for such other offence in such trial, it shall not be lawful for the Special Court to pass a sentence of imprisonment for a term exceeding the term provided for conviction in a summary trial under such other law."

The Fertilizer (Control) Order, 1957:

Clause 13. "Restrictions on Manufacture, Sale, etc. of Fertilizers:

13. Restrictions on manufacture, sale and distribution of fertilizers. -- (1) No person shall himself or by any other person on his behalf -

(a) manufacture for sale, sell, offer for sale, stock or exhibit for sale, or distribute any fertilizer which is not of prescribed standard;"

Code of Criminal Procedure:

Section 262:

"262. (1) In trials under this Chapter, the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned.

(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter."

Section 468:

"468. (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be --

(a) xxx xxx

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;"

4. The learned Counsel appearing for the petitioners contended before us that the learned Single Judge had not recorded any reasons for disagreeing with the decision of the Court earlier rendered by a Single Judge in a similar matter and since the reference did not record reasons, it cannot be entertained. In the order made by the learned Single Judge by virtue of which the matter has been placed before the full Bench, it is stated that the learned Single Judge found herself in total disagreement with the view earlier expressed. The larger Bench is constituted to consider the Revision Application and is not exercising any appellate powers over the learned Single Judge's order. It is well settled that when a Single Judge of the High Court does not agree with the ratio of a decision earlier rendered by a Single Judge of the same Court, the matter is required to be referred to a larger Bench. In such process there is no decision rendered in the matter in view of the referring judge not being able to take a different view due to the law of precedents. The reason that it was not possible for the learned Judge to agree with the view earlier expressed was in our opinion by itself sufficient to justify placing of the matter for consideration by a larger Bench. When the matter is referred to a full Bench it is the same Court considering the matter, but instead of one judge considering it, now it is three who are required to decide it, having regard to the difference of opinion of the referring judge who could not have taken any decision contrary to the earlier decision.

4.1 It will be seen from the provisions of Rule 5 of the Gujarat High Court Rules, 1993 that a Single Judge may refer any matter before him or question arising in such matter to a Division Bench of two Judges or a larger Bench. The rule does not require any reasons being recorded for the purpose and it is sufficient if in the opinion of the learned Single Judge the matter requires to be considered by a Division Bench of two Judges or a larger Bench. Therefore, even if no reason is recorded for referring the matter, there can arise no question of a larger Bench not being able to consider the matter, because, the process of assignment of work to Benches is purely an internal matter of the High Court governed by these Rules and a matter which could have been considered by a learned Single Judge can always be referred for a decision to a larger Bench. A bare look at the order referring the matter to a larger Bench would, however, show that very cogent reasons are recorded by the learned Single Judge for referring the matter for a decision by a larger Bench. We therefore do not find any substance in the preliminary objection which was raised against the Full Bench hearing the matter, on the ground that the reference was not validly made.

5. The learned Counsel contended that in view of the amendment brought about by the provisions of The Essential Commodities (Special Provisions) Act, 1981, such cases of contravention of the orders made under Section 3 of the said Act are required to be tried summarily and therefore in all such cases now the sentence of imprisonment that may be imposed cannot exceed three months in view of the fact that by Section 12AA(1)(f) of the Act of 1981, the provisions of Sections 262 to 265 (both inclusive) of the Code of Criminal Procedure have become applicable to such trials. He submitted that under Section 262(2) of the Code, no sentence of imprisonment for a period exceeding three months can be passed in case of any conviction under Chapter XXI of the Code, which deals with summary trials. He therefore submitted that since no sentence of imprisonment for a term exceeding three months could be imposed by the Special Court, the complaint was barred by limitation under Section 468(2)(b) read with Section 468(1) of the Code, which provided that no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation, except as otherwise provided elsewhere in the Code. According to the learned Counsel, by Section 7 of the Act of 1981 the proviso to Section 7(1)(a) of the said Act under which a sentence of imprisonment for a term of less than three months could have been imposed

was omitted, since such a proviso was no more necessary in view of the fact that in a summary trial the Special Court could not have imposed any sentence of more than three months. He therefore submitted that even if the case did not fall in Clauses (h) or (i) of sub-section (2) of Section 3 of the said Act, since the Special Court could not have imposed punishment of imprisonment of more than three months' even for the offences falling under Sections 7(1)(a)(ii) of the Act, the complaint was barred by limitation. He submitted that, in any event, the nature of the offence alleged was covered by the provisions of Section 3(2)(h) and (i) of the Act and therefore also since the maximum imprisonment could not have exceeded more than a year, the complaint was barred by limitation, having been filed two years after the commission of the alleged offence.

6. A copy of the complaint which is at Annexure "A" to the Revision Application shows that it was filed on 27.3.1987 against three accused persons including the petitioners for contravention of Clause 13(1)(a) of the Control Order, 1957. It was alleged that the Agricultural Inspector had taken samples of fertilizers on 20.2.1985 in exercise of his statutory powers and the analysis of such samples showed that they were not of the prescribed standards and therefore these accused persons who manufactured and sold such sub-standard fertilizers had contravened the provisions of Clause 13 of the said Order.

6.1 Under Section 468 of the Code, there is a bar to taking cognizance of an offence after a lapse of the period of limitation in respect of offences which are punishable with imprisonment for a term not exceeding the periods mentioned in sub-section (2) thereof. The periods of limitation provided in a graded fashion have nexus with the quantum of punishment of imprisonment that may be imposed, but, for the offences punishable with imprisonment for a term exceeding three years, there is no period of limitation prescribed, which means that for all such offences a complaint can be filed at any point of time.

6.2 The provisions of Section 468 of the Code indicate that for ascertaining as to whether the period of limitation is attracted and if so as to what would it be, one has to ascertain the nature of the offence which is alleged and the term of imprisonment which is prescribed for such offence in the relevant penal provision. The provision prescribing punishment of imprisonment for an offence would indicate the maximum

period upto which a person found guilty of such offence can be incarcerated. In order to ascertain as to with what sentence an offence is punishable, the provision prescribing the punishment of such offence alone is required to be examined. What actual punishment may be imposed is altogether a different thing. In a given case though an offence may be punishable with the term of imprisonment prescribed in the penal provision, a Court may in exercise of its statutory powers impose a sentence which may be far below the maximum prescribed or even release a person on probation, if so permissible under the law. Therefore, by its very nature, the question of limitation cannot be viewed with reference to the quantum of punishment that might ultimately be imposed on the accused person and must necessarily be examined with reference to the provision under which the offence is made punishable with imprisonment and fine or both. Therefore, even in cases where the offence is summarily tried and there is an embargo imposed on the Court proceeding with the trial in a summary way, that it cannot impose imprisonment beyond three months as in Section 262(2) of the Code, that will have no relevance to the question of determining the period of limitation which has to be ascertained, as on the date on which the Court is required to take cognizance, only with reference to the provision under which the offence is made punishable. The expression "offence punishable" is distinct from the question of imposition of sentence, and the word `punishable' would, in context, signify the maximum punishment that can be imposed for an offence under the relevant penal provision. In other words, the maximum extent to which a person can possibly be punished under the penal provision will be decisive for ascertaining the period of limitation and not the sentence that may actually be imposed, which may vary according to the facts and circumstances of the case and the approach adopted by the Court.

6.3 The question of ascertaining the period of limitation cannot be made so fluid so as to depend on the procedure adopted for a trial or its possible outcome. This becomes more evident if the matter is viewed in context of the provisions as they stood prior to the coming into force of the Essential Commodities (Special Provisions) Act, 1981. It will be seen that prior to Special Courts being established, the Magistracy could have taken cognizance of these offences and the trial in a summary way would have meant that a sentence of more than three months could not have been imposed in view of the provisions of Section 262(2) of the Code. However, it was not compulsory for the Magistrate to try the case

in a summary way and it was open for him even in the course of a summary trial to hold that it was undesirable to try the case summarily and to re-hear the case in the manner provided by the Code, as specifically laid down in sub-section (2) of Section 260 of the Code. This would at once indicate that there was no warrant for determining the period of limitation with reference to the manner in which the trial proceeds, because, if that contention is accepted, then the period of limitation would be different for the same offence, depending on whether it is tried in a summary way or in a regular way. Therefore, from the mere fact that a Magistrate could not have imposed a sentence of imprisonment for a term not exceeding three years under Section 262(2) of the Code or that now the Special Court cannot pass a sentence of imprisonment for a term exceeding two years in view of the proviso to Section 12AA(f) of the Act of 1981, it cannot be said that the Act of 1981 had the effect of making any amendment in the provisions of Section 7 of the Act of altering the maximum punishment of imprisonment upto 7 years to three months, as suggested by the learned Counsel. If the contention that no imprisonment of more than three months could be imposed even by the Special Court is accepted, then in view of the omission of the proviso to Section 7(1) of the Act under which punishment for a term of less than three months could have been imposed for adequate and special reasons to be mentioned in the judgement, an anomalous situation would arise of trying a person for an offence for which no sentence of imprisonment either more or less than three months can be imposed, because, on one hand by virtue of Section 262(2) of the Code a sentence of more than three months cannot be imposed, while on the other, by virtue of deletion of the proviso to sub-section (1) of Section 7 of the said Act, no punishment for a term of less than three months can be imposed since Section 7(1)(a)(ii) prescribed the minimum term of imprisonment to be of three months. It is therefore not possible to read in the provisions of The Essential Commodities (Special Provisions) Act, 1981, anything more than what they mean to convey and to hold that the offences which were earlier punishable with imprisonment upto seven years under Section 7 of the Act are now punishable with imprisonment for a term which may extend only upto three months. Such a startling result is obviously not intended by the legislature, especially in view of the fact that the avowed object of the Essential Commodities (Special Provisions) Act, 1981 is to deal more effectively with persons indulging in anti-social activities as stated in its preamble. The idea seems to be to make law more stringent and not to relax it so as

to encourage people into committing breach of the provisions of the Essential Commodities Act, which are enacted for the welfare of the society.

8. The learned Counsel for the petitioners placed heavy reliance on a decision of a learned Single Judge of the Punjab & Haryana High Court in Nohar Chand Gupta Vs. State of Punjab, reported in 9 (1984) EFR 340, in which, while dealing with a similar case, the Court found that there was contravention of Clause 13 of the said Order and yet held that the offence was punishable under Section 7(1) (a) (i) of the Act and therefore, since the maximum term of imprisonment did not exceed one year, the period of limitation applicable was one year. In para 6 of the judgement it was observed that the charge-sheet indicated that the petitioner was alleged to have contravened the provisions of the Fertilizer Control Order 1957 "punishable under Clause 13." Clause 13 which we have reproduced above clearly shows that it does not prescribe punishment for any offence but only lays down the restrictions on manufacture, sale and distribution of fertilizers. The contravention of these requirements of Clause 13 of the Order is an offence under Section 7 of The Essential Commodities Act and not under Clause 13 itself. For the reasons which we have indicated hereinabove, we, with respect, cannot agree with the said decision of the Punjab High Court.

9. Even the contention that the offence alleged against of petitioners falls within the ambit of Section 7(1) (a)(i) of the Act is wholly misconceived. The said provision has reference to the violations of the nature covered under Clause (h) or Clause (i) of sub-section (2) of Section 3, which, as noted above, pertain to the provisions that may be made under the Order for collecting any information or statistics with a view to regulating or prohibiting any of the matters enumerated in clauses (a) to (g) of sub-section (2) of Sec.3 or for requiring persons engaged in the production, supply etc. of the essential commodities to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto as may be specified in the Order. In the present case, admittedly, the allegations made in the complaint are that the accused persons were indulging in manufacture and sale of fertilizer, samples of which were below the prescribed standards as per the result of the laboratory tests. That allegation is an allegation of contravention of the provisions of Clause 13(1)(a) of the said Order and is nowhere near the matters which are covered by Clauses (h) or (i) of sub-section (2) of

Section 3 of the Act, which are relatable to the provisions of Clauses 20 and 21 of the said Order, interalia, empowering an inspector to require any manaufacturer to give any information with respect to the manufacture and disposal of any fertilizer manufactured by him, and the Controller to issue orders in writing directing the manufacturers, dealers or importers of fertilizers to maintain books of account etc. and to submit returns of statements in such form and containing such information relating to their business and within the time, that may be specified in their order. Therefore, the nature of the contravention alleged in the complaint which is relatable to Clause 13 of the Fertilizer Control Order, 1957 would not fall under Section 7(1)(a)(i) of the Act for which a lesser punishment of imprisonment which may extend upto one year is provided, but would fall under sub-clause (ii) of Clause (a) of Section 7(1) of the Act, under which a person who contravenes any order made under Section 3 shall be punishable with imprisonment for a term which shall not be less than three months, but which may extend to seven years and shall also be liable to fine. It is this word "punishable" occurring in Section 7(1)(a) in context of the offences falling in sub-clause (ii) thereof that will have relevance in determining the question of the period of limitation under Section 468 of the Code and since the offence alleged is punishable with imprisonment for a term which may extend to seven years, obviously there is no period of limitation attracted in the present case and the complaint was therefore not barred by limitation under Section 468 of the Code. The decision of the learned Single Judge in Criminal Revision Application No. 410/89 (P.D. Agarwal Vs. State of Gujarat and anr.) decided on 11.10.1990 taking a contrary view does not lay down the correct law and will stand over-ruled in view of what we have held hereinabove.

10. In this view of the matter, we do not find any substance in this Revision Application and uphold the order dated 30.11.1989 of the learned trial Judge rejecting the application Ex. 39 made by the petitioners. The Revision Application is therefore, rejected. Rule is discharged.

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